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20 and Customs Enforcement

21 UNITED STATES DISTRICT COURT
22 FOR THE CENTRAL DISTRICT OF CALIFORNIA

23 AMERICAN CIVIL LIBERTIES
24 UNION FOUNDATION OF
25 SOUTHERN CALIFORNIA,

26 Plaintiff,

27 v.

28 UNITED STATES IMMIGRATION
29 AND CUSTOMS ENFORCEMENT, et
al.,

30 Defendants.

31 No. 2:22-cv-04760-SHK

32 **DEFENDANT U.S. IMMIGRATION
33 AND CUSTOMS ENFORCEMENT'S
34 RESPONSE TO STATEMENT OF
35 GENUINE DISPUTES OF MATERIAL
36 FACT**

37 Honorable Shashi H. Kewalramani
38 United States Magistrate Judge

1 Pursuant to Local Rule 56-4, Defendant ICE submits this Response to Statement
2 of Genuine Disputes of Material Fact.

No.	MOVING PARTY'S UNCONTROVERTED FACT & SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE TO CITED FACT AND SUPPORTING EVIDENCE
1	<p>Plaintiff's FOIA Request sought "any and all records that were prepared, received, transmitted, collected, and/or maintained by ICE or DHS that describe, refer, or relate to the release of hospitalized detainees from custody before their death; any records related to release of individual detainees once hospitalized; and any records related to the death of such detainees after their release from custody, including any communications or investigations" dating from January 1, 2016.</p> <p><i>Evidence:</i> Dkt. 24 (First Amended Complaint), ¶35 & Ex. A thereto (Dkt. 24-1 at 2-14)</p>	<p>1. Disputed. Plaintiff's request contains the quoted language, but the specific records sought are spelled out in significant detail, which is not included in this fact. ECF No. 1-1 (Plaintiff's FOIA Request), 5-7. Additionally, Plaintiff's request seeks documents "from January 1, 2016 to the present," "[u]nless otherwise noted." <i>Id.</i> at 4. Only Parts 2-9 of Plaintiff's request are limited to this date range. Part 1 is not. Part 1 specifies that the request is made "without limitation to date." <i>Id.</i> at 5.</p> <p><i>Evidence:</i> ECF No. 1-1, 4-7.</p>
1. Moving Party's Response		
The above represented a summary of the FOIA Request, not the entirety of the nine-subparts. Indeed, ICE cited to the entire FOIA request itself. In any event this fact is not dispositive to the Court's resolution of the pending motions.		
2	ICE received the FOIA Request on May 2, 2022.	2. Disputed. Plaintiff sent this request by email on April 29, 2022.
<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 4		

Evidence: ECF No. 24-1
(Email from Michael
Kaufman), 14.

2. Moving Party's Response

Plaintiff does not dispute this fact, which identifies the date ICE received the FOIA request, not the date Plaintiff submitted it.

See L.R. 56-4 (“...the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the Statement of Genuine Disputes and (b) *controverted by declaration or other written evidence* filed in opposition to the motion.”) (emphasis added).

In any event this fact is not dispositive to the Court's resolution of the pending motions.

3	<p>On May 16, 2022, the ICE FOIA Office sent Plaintiff a letter acknowledging receipt of the FOIA request. It was assigned tracking number 2022-ICFO-16321.</p> <p><i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 5</p>	3. Undisputed but immaterial.
4	<p>When the ICE FOIA Office receives a FOIA request, the intake staff evaluates it to determine if it is a proper FOIA request per DHS FOIA regulation 6 C.F.R. § 5.3. Generally, a FOIA request is considered proper and in compliance with DHS regulations if it reasonably describes the records sought and the records are under the purview of ICE.</p>	4. Undisputed but immaterial.
5	<p>Proper FOIA requests are entered into a database known as Secure Release and assigned a case tracking number. Based upon the requestor's</p>	5. Undisputed but immaterial.

1	description of the records being sought and ICE 2 FOIA's knowledge of the various program offices' 3 missions, the ICE FOIA Office identifies the 4 program office(s) likely to possess responsive records and tasks the appropriate program 5 office(s) to conduct the necessary searches. <i>Evidence: Declaration of Fernando Pineiro, ¶ 10</i>	
6	ICE records are maintained by leadership offices 7 and/or within ICE directorates, including but not 8 limited to, the Office of Public Affairs (OPA), the 9 Office of Enforcement and Removal Operations 10 (ERO), the Office of Professional Responsibility 11 (OPR) and the ICE FOIA Office. The program 12 offices are typically staffed with a designated 13 point of contact (POC) who is the primary person 14 responsible for communications between that program office and the ICE FOIA Office. Each POC is a person with detailed knowledge about the operations of his/her respective program office. <i>Evidence: Declaration of Fernando Pineiro, ¶ 11</i>	6. Undisputed but immaterial.
7	Upon receipt of a proper FOIA request, the ICE FOIA Office will identify which program offices, based upon their experience and knowledge of ICE's program offices, within ICE are reasonably likely to possess records responsive to that request, if any, and task the relevant program offices with searches. <i>Evidence: Declaration of Fernando Pineiro, ¶ 12</i>	7. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On that understanding, undisputed but immaterial.
8	Once the ICE FOIA Office determines the appropriate program offices for a given request, it provides the POCs within each of those program offices with a copy of the FOIA request and instructs them to conduct a search for responsive records. The POCs then review the FOIA request, along with any case-specific instructions that may	8. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On

1	have been provided and, based on their experience 2 and knowledge of their program office practices 3 and activities, forward the request and instructions 4 to the individual employee(s) or component 5 office(s) within the program office that they believe are reasonably likely to have responsive records, if any.	that understanding, undisputed but immaterial.
6	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 12	
7	9 In conformity with the ICE FOIA Office's 8 instructions, the individuals and component 9 offices are directed to conduct searches of their 10 file systems, including both paper files and 11 electronic files, which in their judgment, based on 12 their knowledge of the manner in which they 13 routinely keep records, would most likely be the files to contain responsive documents.	9. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On that understanding, undisputed but immaterial.
14	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 12	
15	10 Once those searches are completed, the individuals 16 and component offices provide any potentially 17 responsive records to their program office's POC, 18 who in turn, provides the records to the ICE FOIA 19 Office. The ICE FOIA Office then reviews the 20 collected records for responsiveness and the application of appropriate FOIA Exemptions.	10. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On that understanding, undisputed but immaterial.
21	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 12	
22		
23		
24	11 ICE employees maintain records in several ways. 25 ICE program offices use various systems to 26 maintain records, such as investigative files, 27 records regarding the operation of ICE programs, and administrative records.	11. Undisputed but immaterial.
28		

1	<i>Evidence: Declaration of Fernando Pineiro, ¶ 13</i>	
2	12 ICE employees may store electronic records on 3 their individual computer hard drives or their 4 program office's shared drive (if the office uses one).	12. Undisputed but immaterial.
5	<i>Evidence: Declaration of Fernando Pineiro, ¶ 13</i>	
6	13 The determination of whether or not these 7 electronic locations must be searched in response 8 to a particular FOIA tasking, as well as how to 9 conduct any necessary searches, is necessarily based on the manner in which the employee maintains his/her files.	13. Undisputed but immaterial.
10	<i>Evidence: Declaration of Fernando Pineiro, ¶ 13</i>	
11	14 Additionally, all ICE employees have access to e- 12 mail. ICE uses the Microsoft Outlook e-mail 13 system. Each ICE employee stores his/her files in 14 the way that works best for that particular 15 employee. ICE employees use various methods to 16 store their Microsoft Outlook e-mail files - some 17 archive their files monthly, without separating by 18 subject; others archive their e-mail by topic or by 19 program; still others may create PST files of their 20 emails and store them on their hard drive or shared 21 drive.	14. Undisputed but immaterial.
22	<i>Evidence: Declaration of Fernando Pineiro, ¶ 14</i>	
23	15 Each ICE employee stores his/her files in the way 24 that works best for that particular employee. ICE 25 employees use various methods to store their 26 Microsoft Outlook e-mail files - some archive 27 their files monthly, without separating by subject; 28 others archive their e-mail by topic or by program; still others may create PST files of their emails and store them on their hard drive or shared drive.	15. Undisputed but immaterial.
29	<i>Evidence: Declaration of Fernando Pineiro, ¶ 14</i>	
30	16 Records received by the ICE FOIA Office from 31 the program office POCs are assigned to a FOIA 32 processor who determines whether or not the	16. Plaintiff understands this fact to set out the process by which ICE

1	records are responsive to the FOIA request. If the 2 records are responsive, the FOIA processor will 3 redact information pursuant to the FOIA or 4 Privacy Act, as appropriate, while simultaneously 5 ensuring that all reasonably segregated non- 6 exempt information is released. <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 15	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
17	Frequently, the ICE FOIA Office must coordinate between multiple program offices to ensure the program office records are properly redacted and information is correctly segregated. <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 16	17. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On that understanding, undisputed but immaterial.
18	Once the ICE FOIA Office completes its coordination efforts and all responsive records have been processed, the ICE FOIA Office releases the responsive records to the requestor. <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 16	18. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On that understanding, undisputed but immaterial.
19	After reviewing the Request, and based on the information sought in the Request, the experience and knowledge of ICE's practices and activities and discussions with the Plaintiff, the ICE FOIA Office determined that because of the subject matter of the Request, OPR, various subcomponents of ERO, the Office of Regulatory Affairs and Policy (ORAP), and Homeland Security Investigations Joint Intelligence Operations Center (JIOC) were the program offices likely to have responsive records (if such	19. Undisputed but immaterial.

1	records existed).	
2	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 18	

3 19. Moving Party's Response

4 This fact is material to the Court's determination of whether ICE has met its burden
5 under the FOIA with respect to the sufficiency of its search for records responsive to
6 Plaintiff's FOIA Request. The above fact demonstrates that ICE conferred with
7 Plaintiff directly, on multiple occasions, over the locations to be searched and search
terms used.

8 Plaintiff offers no evidence to rebut this. *See* L.R. 56-4 ("...the Court may assume that
9 the material facts as claimed and adequately supported by the moving party are
10 admitted to exist without controversy except to the extent that such material facts are
11 (a) included in the Statement of Genuine Disputes and (b) **controverted by declaration**
or other written evidence filed in opposition to the motion.") (emphasis added).

12	20 The ICE FOIA Office also agreed to search the 13 emails of former ICE Directors at Plaintiff's 14 request.	20. Undisputed but immaterial.
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15 *Evidence:* Declaration of Fernando Pineiro, ¶ 18

16 20. Moving Party's Response

17 This fact is material to the Court's determination of whether ICE has met its burden
18 under the FOIA with respect to the sufficiency of its search for records responsive to
19 Plaintiff's FOIA Request. The above fact demonstrates that ICE conferred with
20 Plaintiff directly, on multiple occasions, over the locations to be searched and search
terms used.

21 Plaintiff offers no evidence to rebut this. *See* L.R. 56-4 ("...the Court may assume that
22 the material facts as claimed and adequately supported by the moving party are
23 admitted to exist without controversy except to the extent that such material facts are
24 (a) included in the Statement of Genuine Disputes and (b) **controverted by declaration**
or other written evidence filed in opposition to the motion.") (emphasis added).

25	21 Based on their subject matter expertise and 26 knowledge of the agency record systems, the ICE 27 FOIA Office instructed these program offices to 28 conduct a comprehensive search for records and to provide all potentially responsive records located	21. Disputed. The ICE FOIA Office did not instruct these program offices to construct a comprehensive search. To the contrary, the
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>during that search to the ICE FOIA Office for review and processing.</p> <p><i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 18</p>	<p>ICE FOIA Office's instructions to these program offices contained various flaws detailed in Plaintiff's summary judgment briefing. Plaintiff sets out several examples below:</p> <p>For Parts One through Three, ICE produced an email chain showing that Adelanto ICE officials agreed to prepare a death notification for Martin Vargas Arellano. ECF No. 112-4, 177. The people involved in this email chain are redacted in the produced version, but ICE is aware who was on this chain. ICE admits it has not searched all of the custodians on this chain, including the ICE headquarters staff, who likely would have been copied on missing records, including follow-up correspondence showing the referenced death notification or any discussion of why it was not completed. Additionally, CRCL has produced an email to unidentified "ICE Colleagues" explaining that CRCL was preparing a "formal expert recommendations memo" regarding Mr. Arellano's death. ECF No. 112-4, 208.</p>
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	<p>1 ICE did not produce this 2 expert recommendations 3 memo, suggesting that it did 4 not appropriately search the 5 unidentified ICE employees 6 on the email, or other 7 locations where it likely 8 could be found.</p> <p>9 Both of these failures are 10 indicative of a failure to 11 instruct program offices to 12 comprehensively search.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>10 For Part Five, Plaintiffs 11 have identified that ICE 12 keeps an “SDI list” that 13 includes cases of detainees 14 where there is “significant 15 coordination required to 16 repatriate <i>or to release</i> a 17 detainee/resident in the 18 United States due to their 19 medical condition,” and that 20 ICE holds regular “SDI 21 meeting[s]” about these 22 people. ECF No. 112-4, 125 23 (emphasis added). Records 24 regarding the SDI list and 25 meetings are responsive, but 26 ICE has conducted no 27 search at all for these 28 records. <i>See</i> Pineiro Decl. ¶ 47.</p> <p>For Parts Six and Seven, ICE’s FOIA Office undisputedly determined that JIOC was “likely to have responsive records (if such records existed).”</p>
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	<p>Def's SUMF ¶ 19. Statements by DHS confirm that JIOC has responsive "significant event reports." DHS, Privacy Impact Assessment for the Significant Event Notification (SEN) System 3 n.4, Oct. 15, https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-sen-october2021.pdf [https://perma.cc/7EEE-A6JW]. ICE has conducted no search at all of JIOC. See Pineiro Decl. ¶ 54.</p> <p>For Part Eight, Plaintiff has provided concrete evidence indicating that ICE's <i>Fraihat</i> records are, according to an ICE employee, "the only place" where ICE was capturing the COVID hospitalization data that would be responsive to Plaintiff's request. ECF No. 112-4, 163 (Moon Dep. excerpts at 163:4-10); <i>see also</i> ICE, ERO COVID-19 Pandemic Response Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022), https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf [https://perma.cc/3JDD-AQZ8]. ICE has conducted</p>
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>no search at all of these records. <i>See</i> Pineiro Decl. ¶ 74.</p> <p>For Part Nine, even though the ICE FOIA Office identified nine custodians likely to have responsive information, it did not instruct them to do a comprehensive search. Instead, after a single attempt to run a search resulted in technical issues, the FOIA Office gave up on further searches. Pineiro Decl. ¶ 80. And even though the ICE FOIA Office identified “Sharepoint and eClinicalWorks” as locations likely to contain responsive information, it did not instruct ICE employees to do more than a single search for information about the four people Plaintiff identified in its FOIA request. Pineiro Decl. ¶¶ 76, 80, 81.</p> <p><i>Evidence:</i> Def’s SUMF ¶ 19; Pineiro Decl. ¶¶ 45, 54, 74, 76, 80, 86; ECF No. 112-4, 125, 163 (Moon Dep. excerpts at 163:4-10), 177, 208; DHS, Privacy Impact Assessment for the Significant Event Notification (SEN) System 3 n.4, Oct. 15, https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-</p>
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1		senoctober2021.pdf [https://perma.cc/7EEE-A6JW]; ICE, ERO COVID-19 Pandemic Response Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022), https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf [https://perma.cc/3JDD-AQZ8].
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12 21. Moving Party's Response

13 Plaintiff provides no facts or evidence, rather than argument, to dispute
14 Uncontested Fact No. 21. *See* L.R. 56-4. Moreover, it overlooks that agency
15 declarations are accorded “a presumption of good faith, which cannot be rebutted by
16 ‘purely speculative claims about the existence and discoverability of other
17 documents.’” *SafeCard*, 926 F.2d at 1200. Affidavits that describe what was searched
and by whom are enough to establish an adequate search. *See Lawyers' Comm.*, 534 F.
Supp. 2d at 1131.

18	22	All locations likely to contain records responsive 19 to the Request (to the extent that they exist within 20 ICE's custody) were searched. <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 18	Disputed. Several locations likely to contain records responsive to the Request were not searched at all. example, or Part Five, Plaintiffs have identified that ICE keeps an “SDI list” that includes cases of detainees where there is “significant coordination required to repatriate <i>or to</i> <i>release</i> a detainee/resident in the United States due to their medical condition,”
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	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>and that ICE holds regular “SDI meeting[s]” about these people. ECF No. 112-4, 125 (emphasis added). Records regarding SDI meetings and list are responsive, but ICE has conducted no search at all for these records. <i>See</i> Pineiro Decl. ¶ 47. For Parts Six and Seven, ICE’s FOIA Office undisputedly determined that JIOC was “likely to have responsive records (if such records existed).” Def’s SUMF ¶ 19. Statements by DHS confirm that JIOC has responsive “significant event reports.” DHS, Privacy Impact Assessment for the Significant Event Notification (SEN) System 3 n.4, Oct. 15, https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-september2021.pdf [https://perma.cc/7EEE-A6JW]. ICE has conducted no search at all of JIOC. <i>See</i> Pineiro Decl. ¶ 54. For Part Eight, Plaintiff has provided concrete evidence indicating that ICE’s <i>Fraihat</i> records are, according to an ICE employee, “the only place” where ICE was capturing the COVID hospitalization</p>
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	<p>data that would be responsive to Plaintiff's request. ECF No. 112-4, 163 (Moon Dep. excerpts at 163:4-10); <i>see also</i> ICE, ERO COVID-19 Pandemic Response Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022), https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf [https://perma.cc/3JDD-AQZ8]. ICE has conducted no search at all of these records. Pineiro Decl., ¶ 74. Additionally, there were several locations where ICE conducted a cursory search but did not search adequately. <i>See</i> Pl's Resp. to Def's SUMF ¶ 21.</p> <p><i>Evidence:</i> Def's SUMF ¶ 19; Pineiro Decl., ¶¶ 45, 54, 74; ECF No. 112-4 at 125, 163 (Moon Dep. excerpts at 163:4-10); DHS, Privacy Impact Assessment for the Significant Event Notification (SEN) System 3 n.4, Oct. 15, https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-senoctober2021.pdf [https://perma.cc/7EEE-A6JW]; ICE, ERO COVID-19 Pandemic Response Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022),</p>
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1		https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf [https://perma.cc/3JDD-AQZ8].
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2 22. Moving Party's Response
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4 Plaintiff provides no facts or evidence, rather than argument, to dispute
5 Uncontested Fact No. 22. *See L.R. 56-4*. Moreover, it overlooks that agency
6 declarations are accorded “a presumption of good faith, which cannot be rebutted by
7 ‘purely speculative claims about the existence and discoverability of other
8 documents.’” *SafeCard*, 926 F.2d at 1200. Affidavits that describe what was searched
9 and by whom are enough to establish an adequate search. *See Lawyers' Comm.*, 534 F.
10 Supp. 2d at 1131.

14	23	Based on ICE's searches, a total of 53,426 pages 15 of potentially responsive records were located, 16 along with 911 pages of records referred to ICE from other departments. <i>Evidence: Declaration of Fernando Pineiro, ¶ 82</i>	23. Undisputed but immaterial.
17	24	Of those 53,426 pages, 21,153 pages and an Excel 18 spreadsheet were determined to be responsive and 19 produced to the Plaintiff. <i>Evidence: Declaration of Fernando Pineiro, ¶ 82</i>	24. Undisputed but immaterial.

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2 Dated: April 23, 2025

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